Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications by Qwest Communications, International Inc. for Authorization to Provide In-Region, InterLATA Services in Montana, Utah, Washington and Wyoming	)	CC Docket No. 02-189

REPLY COMMENTS OF COVAD COMMUNICATIONS COMPANY

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Introduction

Qwest's pending applications for section 271 in-region, inter-LATA authorization continue to exhibit serious defects in several aspects. As discussed in detail in Covad's opening comments, Qwest has failed to meet its required burden in several critical areas, including line shared loop pricing, line shared loop provisioning, and access to loop qualification information. In these reply comments, Covad provides additional responses to Qwest's efforts at leading the Commission to dismiss these serious gaps in Qwest's 271 showing. In particular, Covad responds to Qwest's arguments regarding line shared loop pricing and provisioning. Covad also provides additional information recently developed by Covad about Qwest's loop qualification OSS for competitors. For the reasons set forth in Covad's initial comments and herein, Covad believes that Qwest has failed to make the requisite statutory showing required before Qwest can be granted interLATA section 271 authorization. Until these issues are resolved, Qwest's 271 applications cannot be granted.

1. Qwest's Recurring Rate for the High Frequency Portion of the Loop Is a Clear Violation of TELRIC.

As discussed in detail in Covad's comments, Qwest's pricing for the UNE HFPL in Washington state represents a clear violation of TELRIC.[1] Qwest has failed to provide an adequate response to Covad's demonstration that these rates constitute a clear violation of the Commission's pricing rules and therefore section 271. Qwest must not be allowed into the interLATA market until it charges competitors the same price Qwest continues to charge itself: $0. This non-discriminatory price is the only method by which

[1] *See* Covad Comments at 5-16.

to remedy the *clear* violation of TELRIC perpetrated by Qwest's positive $4 rate for the HFPL in Washington.

Qwest has failed to develop costs underlying this $4 rate in compliance with the Commission's TELRIC rules – indeed, the HFPL rate amount in Washington appears to have been picked out of a hat. Qwest failed to prove that it sustains any costs, much less TELRIC-compliant costs, through production of a TELRIC-compliant cost study, even though such a study is required by the FCC's pricing rules. Moreover, Qwest failed to apply the pricing principles set forth by the FCC in the *Line Sharing Order* for the pricing of the HFPL. The FCC developed these pricing principles precisely to prevent incumbents from fully recovering loop costs prior to any offering of line shared xDSL service, while at the same time charging competitors for the use of the loop. In fact, in Washington state, Qwest has failed to show that the use of the high-frequency portion of the loop results in any incremental loop costs whatsoever – and so Qwest seeks the imposition of an illegal "market-based" rate rather than a cost-based rate. Indeed, Qwest's positive rate for UNE HFPL in Washington results in clear discrimination against competitors, artificially inflating competitors' costs of providing line shared xDSL services above Qwest's costs, and results in double-recovery of loop costs by Qwest. Qwest's pricing for the HFPL in Washington State simply fails to satisfy the requirements of TELRIC, and therefore section 271.

Qwest has falsely argued to this Commission that UNE HFPL pricing is somehow exempt from the FCC's TELRIC pricing standard.[2] As Covad has shown, however, UNE

[2] *See*, *e.g.,* Declaration of Jerrold Thompson, Qwest Opening Brief in WC Docket No. 02-148, at p. 69, para. 106 (falsely stating that the FCC's Line Sharing Order, "instead of using TELRIC," sets forth permissive, non-TELRIC pricing principles for UNE HFPL).

HFPL pricing must conform to the same TELRIC pricing standard this Commission requires for all UNEs. Indeed, the FCC's *Line Sharing Order* provided a simple prescription for setting UNE HFPL prices utilizing TELRIC principles: incumbent LECs should not charge competitors more for the UNE HFPL than the incremental loop costs they allocate to their own xDSL services.[3] The FCC took pains to make clear that this HFPL pricing principle was fully consistent with TELRIC:

> These guidelines either follow directly from the … TELRIC … methodology that the Commission set forth in the *Local Competition First Report and Order* to govern interconnection and unbundled network element pricing, or, if not a direct outgrowth of those principles, are consistent with them in the context of this particular unbundled network element.[4]

Notwithstanding the FCC's clear direction on how states should develop pricing for UNE HFPL in conformance with TELRIC pricing principles, the Washington state commission decided that it would diverge from the pricing principles set forth in the *Line Sharing Order*, and decided to impose a positive rate in excess of the zero loop costs Qwest allocates to its tariffed xDSL service. In fact, the Washington Utilities and Transportation Commission, quoting testimony from Qwest's own witness, takes note of the fact that Qwest treats its tariffed line shared xDSL service as causing no incremental loop costs.[5] During the Washington cost proceedings, Qwest reaffirmed that it incurs no direct or incremental loop costs when providing the HFPL:

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[3] *Line Sharing Order*, ¶ 139 (emphasis added).

[4] *Line Sharing Order*, ¶ 132.

[5] *Washington Utilities and Transportation Commission, Continued Pricing of Unbundled Network Elements, Transport and Termination,* 13th Supplemental Cost Order, Part A, Docket No. UT-003013, at 14.

> Q: Now, focusing again on what we have described as the loop, the piece of copper between the network interface device and the central office, isn't it correct that there are no additional costs to the loop itself when a CLEC provides DSL service using the HUNE?
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> A: That's correct … [T]here are not any additional costs.[6]

Qwest even went so far as to explain that: "In the retail service environment for [Qwest DSL] service, the cost of the loop is attributed to basic service, and therefore there is no incremental cost of the loop attributed to [Qwest DSL]."[7] The Washington Commission proceeded, nonetheless, to set an arbitrary price of $4 for the UNE HFPL, operating under the mistaken assumption that some positive rate must be required, and that a $4 rate does not create a price squeeze. As long as Qwest admits that there are no incremental loop costs in providing line shared xDSL service, however, no positive rate for competitors can pass TELRIC muster.

Furthermore, as long as Qwest fully recovers its loop costs prior to any line shared xDSL being offered, but competitors must nonetheless pay $4 in loop costs when they provide line shared xDSL service, competitors' costs will always be inflated artificially by $4. This is precisely the kind of discriminatory "price squeeze" the *Line Sharing Order*'s TELRIC pricing principles for UNE HFPL sought to prevent:

> This approach also helps alleviate any potential price squeeze… By requiring incumbent LECs to provide access to the shared local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services.[8]

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[6] WA Cost Hearing Trans., (Fitzsimmons), pp. 181:3-11; *see also* WA Cost Hearing Ex. 11 (Thompson Supp. Direct), pp. 5-6; WA Cost Hearing Ex. 194 (Cabe Response), p. 3; WA Cost Hearing Ex. 350 (Spinks Direct), p. 12.

[7] WA Cost Hearing Ex. 34 (Qwest response to Covad Data Request 01-021); *Line Sharing Order*, ¶¶ 41 and 55.

[8] *Line Sharing Order*, 14 FCC Rcd 20912, at para. 141.

Qwest knows that the HFPL rate is not TELRIC-compliant, as should the Washington UTC have known when it arrived at its arbitrary $4 rate.[9] The rationale underlying the WUTC's decision to set a positive rate was driven by the notion that all cost-causers should contribute to the cost of the loop.[10] While, as a theoretical matter, such a rationale could result in a TELRIC-compliant rate, the WUTC's reasoning suffered from several flaws. First, for the reasons already discussed, a positive rate in excess of the ILECs' loop costs for line shared xDSL permits discrimination between the ILEC and the CLEC. Second, it results in over-recovery of loop costs in violation of TELRIC and therefore Section 271, a fact that the WUTC acknowledged but did not resolve.[11] Third, the cost causation the WUTC did focus on (i.e., loop conditioning) is already being recovered by Qwest through the conditioning charges the WUTC approved.[12] The fact that line shared xDSL service results in loop conditioning costs – recovered separately through loop conditioning charges – is no grounds for setting a positive rate for the HFPL portion of the loop facility itself.

Furthermore, Covad disputes the notion that the HFPL should be priced as a positive allocation of shared loop costs, because Covad believes that use of the high frequency portion of the loop results in no incremental loop costs – in apparent agreement with Qwest, as evidenced by the loop cost allocation for its retail xDSL service, and by

[9] *See* WUTC's 13th Supplemental Order in Docket No. UT-003013 (Part A).

[10] *See* Thirteenth Supplemental Order, ¶¶ 56-57.

[11] *Id.*, ¶ 85.

[12] *See id.*, ¶¶58-59.

its own testimony. The fact is that Qwest admitted in another proceeding that the loop should not be viewed as a shared cost:

> Economists generally disagree with the view that the local loop is shared facility because it conflicts with the fundamental principle of cost causation, which, in economics, attributes a cost to the source (an economic decision or activity) that gave rise to it. According to this principle, the costs associated with the loop are caused by a customer gaining access to the network.
>
> ***
>
> The contrary position that the loop's cost should depend on how it is used is based on a fallacy that confuses the cost causer (namely, the consumer or purchaser of the loop) with the entity that incurs and feeds to recover the cost (namely, the supplier of the loop).
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> ***
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> ***Question: Do you accept the premise that the local loop is a shared facility whose costs should be allocated to different services? Answer: No. This premise is contrary to sound economic principles and based on an incorrect approach to cost recovery processes***.[13]

In an *ex parte* letter, Qwest provides little more than a feeble attempt to explain away this testimony.[14] Qwest's *ex parte* fails to explain why it makes sense for Qwest to apply the cost allocation principles set forth in its testimony to loop cost allocation among Qwest services, but not for competitors to apply the same cost allocation principles to loop cost allocation among UNEs. Either the cost for a facility should be allocated entirely to the source of the activity giving rise to the need for that facility, as Qwest's testimony indicates, or not. In other words, either loop costs should be allocated entirely to "a customer gaining access to the network" via basic voice services, as per Qwest's

[13] WA Cost Hearing Trans. (Fitzsimmons), pp. 241-43.

[14] *See* Letter from David Sieradzki, Hogan and Harston, to Marlene Dortch, FCC, filed August 15, 2002 in WC Docket 02-189, at 14.

testimony – and not at all to the UNE HFPL used to provide line shared xDSL alongside existing voice services[15] – or they should not. Qwest is speaking out of both sides of its mouth when its ex parte letter states that the cost allocation principle reflected in its testimony is meant to apply only to pricing services, and not to pricing UNEs. Indeed, the cynical view would be that Qwest pays lip service to this cost allocation principle when it serves to maximize Qwest's revenue (from rate-of-return local rates, as opposed to price-capped exchange access rates), but then refuses to be held to the same principle when it would decrease Qwest's revenues from UNE HFPL.

Nevertheless, even assuming *arguendo* that UNE HFPL should be priced as an allocation of shared loop costs, Qwest has failed to meet the evidentiary burden of showing the $4 rate it charges in Washington state is TELRIC-compliant because it failed to produce a cost study supporting this $4 rate. The fact is that Qwest never even attempted to show that it incurs costs in providing the HFPL, and never developed a cost study containing a methodology for allocating loop costs as a common cost. That is, Qwest never provided a cost study supporting its claimed HFPL costs. Standing alone, this failure too demonstrates a clear violation of TELRIC. The FCC has made clear that the *only* method by which an incumbent LEC may prove that its rates are *cost-based* and compliant with FCC pricing rules is through a *cost study*:

> (e) Cost study requirements. An incumbent LEC *must prove* to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, *using a cost study that complies with the methodology set forth in this section and § 51.511.* 47 C.F.R. § 51.505(e) (emphasis added).

[15] Covad notes that the rules defining line shared loops only permit the high-frequency portion of the loop to be unbundled if incumbent-provided voice service is also present on the loop. *See* 47 C.F.R. § 51.319(h)(3).

As the FCC further specified in the body of its pricing rules, a cost study sufficient to support a claim of cost-based pricing must include support for the joint or common costs associated with the UNE at issue:

> Cost studies must include the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such elements . . . measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration *[plus a] reasonable allocation of forward-looking common costs*. . . . 47 C.F.R. § 51.505.

Equally fatal to Qwest's desire to charge a positive HFPL rate are the problems associated with double recovery. While Qwest has indicated that it will deaverage HFPL rates in some states, deaveraging a positive rate does nothing to address the fact that a positive rate results in double-recovery in the first place. In sum, Qwest's positive HFPL rate is not accompanied by any commitment to rebalance Qwest's rates for other services that already fully recover its loop costs. In the absence of such rebalancing, as the Department of Justice acknowledged in its Comments on the ROC I applications, Qwest will over-recover the cost it incurs in provisioning stand alone and line shared loops since it already recovers all of its loop costs through rates for other services. That is, Qwest will recover more than its costs, in violation of TELRIC, since it already recovers all of its loop costs prior to any line shared xDSL service being offered, and then will receive additional income from the HFPL rates.

Qwest's response to the problems of double-recovery created by its positive HFPL rates is its *ex parte* statement that Qwest's "local exchange rates" do not fully recover its loop costs.[16] This argument is an extraordinary red herring. First, Qwest itself

[16] *See* Letter from David Sieradzki, Hogan and Harston, to Marlene Dortch, FCC, filed August 15, 2002 in WC Docket 02-189, at 13.

admitted that it is subject to rate-of-return regulation in Washington state, guaranteeing Qwest complete recovery of its plant costs, including its loop costs, for the provision of basic local services.[17] Second, any recovery of loop costs outside of local exchange rates (such as from the interstate subscriber line charge) does nothing to alleviate the double-recovery created by a positive HFPL rate. Qwest does not argue that its current rate structure for basic services results in under-recovery of its loop costs, nor could it support such an assertion. The fact is that, as evidenced by Qwest's own allocation of zero loop costs to its line shared xDSL services, Qwest fully recovers its loop costs prior to offering any line shared xDSL services. Consequently, any positive HFPL rate for competitors results in over-recovery of loop costs by Qwest.

Qwest then proceeds to argue that its 271 application is not the appropriate forum in which to examine this double-recovery of its loop costs from competitors.[18] The sheer audacity of this argument is stunning. Qwest asks for the Commission to ignore its anticompetitive and discriminatory HFPL pricing, which clearly runs afoul of the Commission's pricing principles established in the *Line Sharing Order*, in the very proceeding intended by Congress to examine whether Qwest's local markets are open to competitors like Covad. Qwest asks the Commission to ignore its discriminatory UNE pricing, in the very proceeding meant to determine whether Qwest's UNE pricing is cost-based and TELRIC-compliant before allowing it to vertically enter interLATA markets.

[17] WA Cost Hearing Ex. 350 (Spinks Direct), p. 12. In Washington, Qwest is subject to rate of return regulation pursuant to which Qwest is guaranteed to recover 100% of its loop costs for basic voice services. *See* WA Cost Hearing Trans. (Thompson), p. 536:1-537:21. Further, Qwest publicly pledged in May 2000 that it would not increase its tariffed voice rates, despite the probability of a zero HFPL.

[18] *See* Letter from David Sieradzki, Hogan and Harston, to Marlene Dortch, FCC, filed August 15, 2002 in WC Docket 02-189, at 13.

Moreover, Qwest asks that the Commission allow it into the interLATA voice and data marketplace, while it continues to over-recover its loop costs from competitors like Covad, and in the meantime leave off to a future, unspecified date any removal of costs from its local rates, in an unspecified proceeding by the Washington UTC that has yet to be initiated. Qwest's position leaves no guarantee that any such future proceeding would in fact appropriately remove from basic service rates the loop costs Qwest now recovers from competitors in UNE HFPL rates – leaving aside for the moment that Qwest has failed to show with a cost study that the $4 it currently recovers even complies with TELRIC! Indeed, Qwest's position leaves no guarantee that any such future proceeding would in fact occur. Qwest further fails to mention that it has every incentive to continue allocating as much loop cost as it can to basic voice services, for which it remains the dominant provider.[19] Qwest wants the Commission to give Qwest its 271 cake now, and count on Qwest not to eat it later. Qwest is essentially asking for the Commission to perpetuate indefinitely an untenably anticompetitive situation, and provide Qwest with 271 authority to boot. The audacity of this argument is outrageous.

Qwest's pricing of the HFPL in Washington State represents a clear violation of TELRIC and Section 271(c)(2)(B)(i). Qwest's application for Section 271 relief in Washington must be rejected until it sets the HFPL at $0.

2. Qwest Continues to Refuse Providing Covad with the Same Router Test It Uses for Its Own Retail Services Using Line Shared Loops.

[19] Indeed, the other BOCs routinely allocate as much loop cost to their non-xDSL services and as little to their retail xDSL services as they can. For example, Verizon, which discloses no loop costs for its federal DSL retail service, has voluntarily proposed a $0 rate for the HFPL. Similarly, SBC, which also discloses no costs for its retail DSL product, has a $0 HFPL rate in Illinois, Kansas, Michigan and Texas. BellSouth, region-wide, has an HFPL MRC of just over $0.50. Given this context, Qwest's $4 rate should stand out as a red flag to the Commission.

Qwest has failed to adequately respond to Covad's demonstration that Qwest's loop provisioning process for line shared loops discriminates against Covad. Specifically, Qwest has failed to demonstrate that its loop provisioning process does not discriminate against competitors like Covad by denying them access to the same router test Qwest uses to provision line shared loops for its own retail xDSL services. Indeed, the Department of Justice has taken issue with Qwest's loop provisioning process in this very regard.[20] As the DOJ stated in its evaluation of Qwest's applications in this docket,

> Although Qwest has instituted router testing for its retail customers, it still refuses to perform the router test requested by Covad. *Qwest has presented no justification for its refusal to provide the same router testing for CLECs as it does for its retail customers.*[21]

If Qwest did provide Covad with the same router test that Qwest employs when it provisions line shared loops for its retail xDSL services, a number of underlying problems in Qwest's provision of line shared loops to competitors could be mitigated.

a. The Issue of Qwest's Fake SOC Process Has Not Been Resolved

For example, Qwest sends the SOC, or service order completion notice (i.e., the notice that states all provisioning work has been done) for line shared loops irrespective of whether any work has actually been undertaken. Indeed, in a Qwest response to an information request in the Minnesota 271 hearings, Qwest admits that it automatically generates SOC notices for non-dispatch, non-designed loop orders – the type of loops over which Covad would provide line shared services, for example.[22] On a large

[20] *See* Department of Justice Evaluation at 17-18.

[21] *Id*. at 18.

[22] *See* Information Request by Sharon Ferguson to Qwest Corporation, in connection with Minnesota Department of Commerce Docket No. P-421/CI-01-1371 (August 5, 2002).

percentage of Covad orders that receive these "fake SOCs," the cross connections necessary to provision the loop to Covad's collocated facilities are poor, problematic or non-existent. Thus, despite receiving a SOC, Covad has later found that loops are not yet provisioned or provisioned correctly. Quite obviously, this failure can cause a host of problems for Covad, since it relies upon the SOC as notice that the loop is Covad's. Just as with unreliable loop qualification information, Covad is left in the lurch, attempting to explain to its end user customer why service will be delayed.

In an August 16 *ex parte* letter, Qwest provides a brief overview of its processes for sending SOC notices to CLECs. Qwest's *ex parte* makes no mention of the fact that its practice is to send out the SOC automatically on the FOC due date, rather than upon the completion of some work event. Instead, Qwest's letter characterizes the problem with its SOC notices as a limited set of circumstances when a billing completion notice could issue prior to the SOC notice being sent out. This is hardly the primary problem with Qwest's SOC notification process, and is entirely separate from the problem of SOCs being sent out automatically on the FOC due date. The billing issue was a result of the fact that Qwest completed the billing paper work (the "N order") and started billing Covad for certain line shared loops it ordered prior to loop delivery (or completion of the "C" order). This is not the same issue at all as the fake SOC issue. Rather, the fake SOC issue is the result of Qwest sending the service order completion notice for Covad's line shared loops on the due date contained in the FOC, rather than being triggered by completion of the work in the central office necessary to provision a line shared loop. It is obvious that they are two, separate and independent issues that have nothing to do with

each other. The Commission should treat them as such and ignore Qwest's confusing response to the fake SOC issue in its August 16 *ex parte* letter.

b. Covad Continues to Experience High Trouble Ticket Levels

Qwest indicated in a July 12, 2002 *ex parte* filed with the FCC in connection with the first five Qwest applications for Section 271 relief (the "ROC I" applications) that it has attempted to resolve, as of July 1, 2002, both the operational and performance based issues created by the fake SOC. Unfortunately, the data does not bear out Qwest's claim. Covad has experienced non-parity levels of trouble tickets on line shared loops month after month due to poor or missing cross-connects in the central office.[23] As Covad's own data shows,[24] 60% of the trouble tickets it opened with Qwest from April 1, 2002 to date are due to missing or incomplete cross-connects in the central office. Stated as a straight percentage, in the month of April, Covad had to open trouble tickets on 9.2% of its Washington line shared loops delivered due to missing or incomplete cross-connects in the central office. In May, Covad had to open TTs on 11.1% of the line shared loops delivered due to missing or incomplete cross-connects. In June, the percentage again was 15.5%. Indeed, Covad's latest data show that it still continues to experience poor central office work from Qwest, with Covad having to open as of August 16, 2002 trouble tickets on 10.2% of its line shared loop orders closed in July 2002.[25]

[23] *See* Covad Comments at 19.

[24] All percentages provided are Washington specific.

[25] *See* Letter from Praveen Goyal, Covad Communications, to Marlene Dortch, FCC, filed August 20, 2002.

Furthermore, the Commission should not credit Qwest's arguments that Qwest's OP-5 results show that the fake SOC problem has been solved. The problem is that Qwest's results for OP-5 don't match up with the Covad data. More importantly, we have no reason – nor should the Commission – to have any confidence in the Qwest data since Qwest cannot produce any of the underlying data giving rise to its reported OP-5 results. Because of that, there is no way that Qwest and Covad can ever go over, on a trouble ticket by trouble ticket basis, trouble issues to determine whether there is disagreement on whether a TT should be included in OP-5, the problem giving rise to the TT, or the appropriate disposition of a particular TT. Where Qwest cannot produce its underlying data and reconcile that data with a CLEC, or where the CLEC cannot ever reproduce the Qwest results, there is serious question as to the reliability and accuracy of Qwest's reported OP-5 results.

In an *ex parte* letter filed August 20, Qwest claims that any lack of verification of its OP-5 results is Covad's fault. In fact, Qwest claims that Covad is the one that is unable to produce its underlying trouble ticket information in order to verify the OP-5 results. Qwest's assignment of blame to Covad for this issue at this late stage of the 271 process is entirely unjustified and unsupportable. In fact, during the Liberty data reconciliation, Qwest affirmatively stated:

> *Qwest cannot provide the underlying data for OP-5* (New Service Installation Quality Measure). This is due to the nature of the OP-5 data, which is developed based on information from several different sources, rendering an order-by-order accounting impossible ….[26]

[26] *See* Attachment 1 (Qwest Executive Summary of Responses to Liberty Data Reconciliation Requests, provided by Qwest to Covad in connection with Arizona Corporation Commission Docket No. T-00000A-97-0238, received October 23, 2001).

Qwest even confirmed, via email, Liberty Data Group's findings that the OP-5 measure could not be reconciled.[27] Given Qwest's own statements during the data reconciliation, Qwest's *ex parte* claim that it now can produce the underlying data is baffling, as is Qwest's attempt to blame this issue on Covad. Either Qwest can or cannot produce the data – and Qwest's unequivocal statements to date state that Qwest cannot produce the data in any way, shape or fashion that would permit a direct comparison of CLEC and Qwest data for the OP-5 numerator and denominator. Moreover, up until the filing of its August 20 *ex parte*, Qwest had not suggested that this issue was specific to Covad's OP-5 data reconciliation request rather than Qwest's generic inability to produce the data. For Qwest to make this claim at such a late date – and well after some agreement could be reached so as to reconcile OP-5 – should be of grave concern to the Commission. The Commission should discredit Qwest's August 20 *ex parte* to the extent it clearly contradicts Qwest's own prior statements that it could not perform a data reconciliation of its OP-5 results because Qwest could not produce the data underlying those results.

c. Qwest's New Line Sharing "Job-Aid" Is an Inadequate Solution

The fact that Covad continues to experience high trouble ticket levels makes clear that the new Qwest "job-aid" has not resolved all of the problems created when Qwest sends a SOC to Covad on a line shared loop without ensuring that the work was properly done. Under Qwest's new job aid, the CO technician is supposed to place the order in jeopardy status if a problem is found on the line. Presumably, the jeopardy process would prevent the fake SOC from being issued, until and unless the line could be provisioned. What Qwest fails to explain is why a jeopardy notice would ever be issued

[27] *See* Attachment 2.

where the CO technician performs a poor loop installation, resulting in a missing or bad cross-connection. In such a scenario, a jeopardy notice would never be placed on the order (assuming, naturally, that the CO technician is not knowingly providing a poor cross-connection). Instead, the CLEC (and the CLEC's customer) would be left to discover that the line simply did not work, in spite of the issuance of a SOC, when turning up the end user's service.

Furthermore, Qwest's new job aid suffers from specific defects. First of all, Qwest has not explained what steps it has taken to make sure that its central office technicians will make complete use of its job aids. Making the job aid merely available to its technicians is insufficient. Qwest must make sure that its loop provisioning process entails the use of its job aid, and that technicians thoroughly follow through on each step. Second, Qwest's job aid suffers from the additional defect that, when problems are discovered in the line being provisioned, the central office technician is directed merely to jumper around the splitter and place the order in jeopardy status. The job aid contains no instructions directing the technician to engage in any sort of troubleshooting on the high-frequency portion of the line, unlike the voice portion.[28]

d. Qwest Discriminates Against CLECs by Refusing a Router Test

These underlying problems in Qwest's loop provisioning OSS and processes could be substantially mitigated if Qwest provided Covad with the same router test Qwest uses for itself. Covad has repeatedly requested that Qwest provide a router test for end-to-end data continuity as part of its provisioning process for line shared loops, yet Qwest

[28] *See* Qwest July 12 ex parte at 4 ("Step 5"). The job aid does direct the CO technician to troubleshoot failures in the voice portion of the circuit. Qwest does not explain why it fails to provide similar direction for the high-frequency portion of the loop being provisioned to CLECs.

has refused. Now, Qwest has decided that it will use a router test for the loops in its own retail line shared service, using the same type of router and CPE equipment that Covad uses, but continues to refuse providing Covad with such a test, even in face of poor performance on line shared loops. Instead, Qwest only makes available to CLECs an out-of-process test called the LSVT test. Theoretically, the LSVT testing equipment is capable of detecting the provisioning issues Covad currently experiences. After repeatedly seeking a router test from Qwest (even offering to provide Qwest with the necessary router test set equipment) and being met by Qwest's refusal, Covad initially agreed to implementation of the LSVT process in July 2001 to see if the LSVT test would improve Qwest's unsatisfactory loop provisioning performance. Now, after over seven months of experience with this out-of-process test, Covad believes that the LSVT is incapable of resolving Qwest's poor performance. As the data set out above demonstrates, the LSVT test process has simply proved incapable of providing CLECs with the same level of loop provisioning performance Qwest experiences for its retail line shared loops.

There are several reasons why the LSVT test equipment has proved to be unsatisfactory. First, the Qwest technicians use different processes and test equipment for wholesale and retail line shared loops. In essence, therefore, the wholesale provisioning/testing procedure is "out of process" for the Qwest technicians, which necessarily ensures that mistakes will be made on wholesale, but not retail orders. Second, the LSVT equipment is complicated to use (as opposed to the much more simple equipment used for the router test). As a consequence, the Qwest technicians, who use this equipment less frequently than the router test equipment, are not particularly well-

versed in using it and often make mistakes. For example, during an installation that Covad viewed in June 2002, Covad was allowed to watch the central office cross-connect work being performed. During the installation, Covad asked whether the technician was going to perform the LSVT test. The technician was initially confused, but finally remembered the new test set used for CLEC line shared loop installations. The technician stated he would go look for the test set. When he returned a few minutes later, he proceeded to connect the test set to two points on the circuit. The points were not the correct points for testing the circuit. Once Covad explained to the Qwest technician how the LSVT tests the data or line shared loop and where on the circuit to place the test set in order to generate an accurate test, the technician was able to successfully test completed cross-connect work. The technician was very appreciative of the training, but previously never had developed the skills necessary to properly perform LSVT testing, and only did so thanks to Covad. Finally, as indicated above, the Qwest technician would never know whether he did or did not utilize the equipment correctly because all post-test troubleshooting is designed to ensure the voice service, but not the data service, is working properly.

In an ex parte letter filed August 16 2002, Qwest characterizes the router test as testing the "entire DSL service" provided to its customer, as opposed to only circuit continuity itself. Qwest appears to believe that, because the router test provides additional types of information about the linkage between the DSL modem, the DSLAM, the ATM switch and the ISP beyond mere physical connectivity, Qwest need not provide this test to CLECs. If anything, however, Qwest's admission that the router test provides additional information than the LSVT highlights the discrimination inherent in Qwest's

line sharing provisioning. The fact is that, unlike competitive LECs, Qwest can choose to perform any provisioning test it wants for itself – Covad's technicians do not have access to the CO termination of the end user loop in order to perform Qwest's router test for themselves. Only Qwest is in a position to perform the same test for CLECs it performs for itself, and yet it refuses. Moreover, Qwest neglects to mention that the router test is inherently superior to the LSVT test in establishing physical circuit continuity. First, the fact that the LSVT test is out of process increases the likelihood of its being poorly applied (e.g., at the wrong point in the circuit) and resulting in a "false positive" or not being applied at all, as Covad's experience detailed above suggests. Furthermore, and more significantly, as Qwest acknowledges, one of the key pieces of information relayed by the router test is "physical connectivity" between the end user's loop and the DSLAM. The router test inherently provides a more reliable verification of physical circuit continuity than the LSVT because the router test equipment synchronizes with the DSLAM, ensuring that the two pieces of equipment can "talk" to each other. Finally, Qwest states in its *ex parte* letter that Covad would need to provide it with sufficient technical information in order for Qwest to perform router testing for Covad. While Covad would be happy to provide Qwest with any legitimate technical information it needed to perform router tests for Covad, the fact is that Qwest already has the information about Covad's xDSL equipment it needs. Contemporaneous with the deployment of the LSVT in the third quarter of 2001, Qwest upgraded to a DMT DSLAM technology. As a result of this upgrade, Covad and Qwest used, as they now use, the same DSLAM technology. As a consequence, there no longer are any issues as

to router equipment compatibility, which had been Qwest's primary objection in late 2000.

At the end of the day, the problems Qwest has created for itself on both the provisioning and repair of line shared loops can be resolved through use of a router test. By requiring Qwest to provide router test capabilities to CLECs, the Commission ensures that the provisioning process and associated testing undertaken to ensure that a good line shared loop is delivered (that is, a loop with circuit continuity) is at parity between Qwest and CLECs. Simply put, use of the same router test that Qwest utilizes for its own line shared loops will ensure that the Qwest technician will undertake the same testing and provisioning steps for CLEC line shared loops, which should facilitate a significant improvement in Qwest's provisioning performance. Second, use of the router test will resolve the operational issues created by Qwest through poor provisioning performance. That is, the router test will detect and permit the correction of poor or missing cross-connects prior to line shared loop delivery by Qwest, rather than at some point after loop delivery and the end user customer has formed a poor impression of Covad. Third, the router test will ensure that the SOC sent by Qwest to CLECs is reliable. In other words, if the SOC is triggered by the running of the router test (which is an automatic step on the provisioning side for retail line shared loops), then a CLEC can rest assured that all work has been completed and completed properly since the SOC is triggered by actual work completion rather than the arrival of a due date. Finally, by resolving on the provisioning side any problems associated with a particular loop, far fewer trouble tickets will be opened by CLECs which will improve Qwest's currently poor and out of parity M&R

performance for line shared loops, and will decrease the costs incurred on the M&R side to correct provisioning problems.

In spite of the benefits that would flow to both parties if Qwest performed for Covad the same router test Qwest performs for itself, Qwest obstinately continues to refuse providing Covad with this test. As long as Qwest refuses to provide competitors with non-discriminatory loop provisioning, this Commission must refuse to grant Qwest's bids for interLATA entry. Accordingly, until Qwest fully implements a router test process for CLEC line shared loops in each state for which it seeks 271 authorization, its applications should be denied.

3. Qwest Has Failed to Show It Provides Competitors with Non-Discriminatory Access to Loop Qualification Information

As discussed in Covad's opening comments, Qwest has failed to provide sufficient evidence that it makes available to competitors the same loop qualification information available to all Qwest personnel, as opposed to merely retail personnel.[29] Qwest's evidentiary showing on loop information access, consisting primarily of the KPMG test, fails to meet the standards set by the FCC in its prior orders. The FCC stated several years ago in the *UNE Remand Order* that Qwest must "provide competitors with access to all of the same detailed information about the loop available to [itself], and in the same time frame as any of [Qwest's] personnel could obtain it, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install." Further clarifying that obligation in its *Verizon Massachusetts 271 Order*, the FCC stated that the relevant inquiry under the *UNE*

[29] *See* Covad Comments at 24 (discussing KPMG test 12.7).

Remand Order is not whether an ILEC's "retail arm or advanced services affiliate has access to such underlying information but whether such information exists anywhere in [the ILEC's] back office and can be accessed by any of [the ILEC's] personnel."[30]

This concern is not merely speculative on Covad's part. Until approximately one year ago, Qwest provided updated loop qualification data to retail personnel, which data was never provided to CLECs through any means whatsoever. Specifically, until uncovered by CLECs, Qwest refused to update LFACS when it determined that loop qual information was inaccurate, and instead called Qwest retail personnel for a sales referral.[31] While Qwest claims that it has corrected that practice, there is no evidence backing up that statement, particularly since KPMG never looked at any processes for loop qualification database updating in connection with its review of Qwest's OSS.

The loop qualification tool that Qwest does make available to competitors, the Raw Loop Data Tool ("RLDT"), fails to provide Covad with all the information that it needs to successfully place orders for UNE loops to provide xDSL services.[32] While Qwest may provide all needed categories of information, the inaccuracies or incompleteness of that information, such as where information on loop length or spare facility availability is missing, results in Qwest failing to provide CLECs with reliable loop makeup information, thereby materially impeding their ability to compete with

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[30] *In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Mem. Op. and Order, CC Docket No. 01-8, FCC 01-130, 41454 & 58 (Apr. 16, 2001) ("*Verizon Massachusetts Order*"). ¶ 430.

[31] *See* WA 271 Workshop 4 Exh. 899 (JML-15 to Direct Testimony of Jean Liston) (last page shows "option" of providing a sales referral or a database update). In Colorado, Qwest introduced, but later withdrew, a days' earlier version of the LFACS update. *See* CO 271 Workshop Exh. 5 Qwest 61 (last page shows method to update LFACS is to call MegaBit retail personnel)

[32] *See* Covad Comments at 23-38.

Qwest. Covad's complaint is not with the categories or type of information returned. Rather, Covad's complaint is grounded in the fact that the RLDT does not provide accurate, complete (i.e, partially or wholly missing), and reliable loop makeup information.

The persistent inaccuracies in the RLDT database continue to hinder Covad's ability to place loop orders for its xDSL services. Recently, Covad provided Qwest with numerous examples in which the loop order had been placed in held status due to the existence of bridged tap and load coil even though the RLDT information showed no bridged taps and load coils on the line. On a weekly basis, Qwest provides to Covad a listing of its orders that are in held status that week. With respect to line shared loops, the held order list constitutes loops that are in jeopardy status due to the existence of bridged tap (BT) or load coil (LC) on the line and that are being held for conditioning to remove such encumbrances. For a sample time period of six weeks for which Qwest has provided the held order lists (June 17-July 25), Covad took the listing of held line shared loop orders, filtered out all duplicate orders and then re-queried the RLDT to determine whether the presence of BT or LC on each loop was reflected in the information returned by the RLDT. For 44% of the line shared loops contained in the Qwest held order list, the RLDT showed no BT or LC on the loop. That is, even though the RLDT showed that the line shared loop prequalified by Covad did not have any BT or LC on it, when Qwest went to provision 44% of the line shared loops, it determined that the RLDT information was inaccurate since there was, in fact, BT or LC on the loop. Consequently, for the six week sample reviewed by Covad, Qwest's RLDT returned accurate and reliable loop

makeup information on only 56% of the orders reviewed. This is an abysmal record of inaccuracy.

A pre-order MLT would resolve a number of issues that flow from Qwest's inaccurate, unreliable and potentially discriminatory loop qualification systems for competitors. The MLT test, which is a simple, straightforward test that can be remotely triggered and utilizes testing equipment already attached to the Qwest switches, will provide real-time, current loop makeup information – which Qwest conveniently has already provided to itself and apparently updates monthly. Specifically, Qwest runs monthly MLT tests, generating data along more than one hundred data points. Qwest updates the MLT loop lengths in its pre-qualification tools, and in the past has retained the remainder of the results of these MLT tests without making them available to competitors. Rather than the static, outdated and inaccurate loop makeup information contained in the RLDT, the MLT allows the CLEC to see what the actual, current makeup of the loop is, which will allow it to determine whether an order should be placed.

Qwest also will benefit, in a very real manner, from pre-order CLEC access to MLT. Through a pre-order MLT, a CLEC will know most of the attributes of the loop. If the information shows the loop cannot support xDSL service, then the CLEC will not submit that order. This will save Qwest money because it will not incur any administrative costs in creating a service order and flowing it through its system. Qwest will save additional money because it will not actually undertake any work, such as the dispatch of a CO technician to provision a loop because the order will not be placed.

In addition to requiring Qwest to provide competitors with access to pre-order MLT testing, this Commission should require an audit of Qwest's OSS to ensure CLEC parity access to all loop makeup information resident in Qwest. In the absence of an audit, there is a fundamental defect in Qwest's prima facie case of compliance with the competitive checklist.

Conclusion

For the reasons stated herein and in Covad's initial comments, the Commission should reject the applications of Qwest for authority to provide in-region, interLATA services in Montana, Utah, Washington and Wyoming.

Respectfully submitted,

/s/ Praveen Goyal

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26 August 2002

Attachment 1 – Excerpt from Qwest Executive Summary of Responses to Liberty Data Reconciliation Requests, provided by Qwest to Covad in connection with Arizona Corporation Commission Docket No. T-00000A-97-0238, received October 23, 2001

Executive Summary

Covad initially requested verification of 10 performance metrics associated with the 2 wire non-loaded loops, line sharing, and LSR's processing via IMA and EDI for the month of June 2001. Subsequent communications between Covad/Liberty/Qwest revised the reconciliation request to encompass the PO-5, OP-4, OP-5, MR-3, MR-5, and MR-6 PIDs for 2 wire non-loaded loops and line sharing for May, June, and July 2001.

* * *

OP-5 Metric

Qwest cannot provide the underlying data for OP-5 (New Service Installation Quality) measure. This is due to the nature of OP-5 data, which is developed based on information from several different sources, rendering an order-by-order accounting impossible. Qwest has, however, provided the summary files that are used to calculate the numerator and the denominator for the OP-5 measure. An explanation of the algorithm that is used to determine the numerator and the denominator for the OP-5 measure follow:

Denominator:
The denominator for the OP-5 measure is calculated using the IORD summary files for the reporting month ("IORD_0601.csv") and the previous month ("IORD_0501.csv"). For a specific product, specific state and aggregate values of MSA/Zone and dispatch, the value from the variable 'TOT_ORDS' is captured from the reporting month and the previous month. These values are then averaged and rounded and reported as the denominator for OP-5 measure.

Numerator:
The numerator for the OP-5 measure comes from designed (UBL products) as well as non-designed sources (Line Share). The numerator for Line Share products can be calculated using the "MTAS_ICNT_0601.csv" file. The numerator for UBL_2W_NL and UBL_ISDN products can be calculated using the "WFAC_ICNT_0601.csv" file. For a specific product, specific state and aggregate values of MSA/Zone and dispatch, the value from the variable 'NUM' is captured and stored. This 'NUM' value is then subtracted from the denominator (calculated using the process described above) for that particular combination of product, state, MSA/Zone and dispatch. This value is reported as the numerator for the OP-5 measure.

* * *

Attachment 2 – Email from Terri Dunnington, Qwest, re: Response to Liberty Set 5 Data Reconciliation

-----Original Message-----
From: Terri Dunnington [mailto:tdunnin@qwest.com]
Sent: Thursday, November 01, 2001 5:51 PM
To: stright@libertyconsultinggroup.com; jksharpe@aol.com; hlavac@libertyconsultinggroup.com; Beth@libertyconsultinggroup.com; Weswaltrip@aol.com; Doberneck, Megan; Sullivan, James; Anderson, Adrienne
Cc: blevy@uswest.com
Subject: Qwest's response to Liberty Set 5 Data Reconciliation

The following is Qwest's response to Liberty's Set 5 Data Reconciliation Request regarding Covad.

---------- Forwarded by Terri Dunnington/DNVRULNS12/USWEST/US on 11/01/2001 05:49 PM ----------

Data Reconciliation
Data Reconciliation
Lib 05-01

INTERVENOR: Liberty Consulting

REQUEST NO: 01

Please provide the response to P. Hlavac, B. Antonuk, J. Sharpe, and W. Waltrip

This is Liberty's fifth reconciliation data request to Qwest. Please contact Paul Hlavac at 847-446-6240 with any questions.

1. Please confirm that Qwest is unable to provide the individual records
that make up the numerator and denominator of OP-5 for Covad. Liberty assumes that no reconciliation will be possible without these data.

RESPONSE:

Liberty is correct that there is no reconciliation possible for OP-5 New Service Installation Quality. The denominator for this measure is an average of the number of new installation order completed in the current and prior month. These volumes are determined by using summary files and therefore do not have individual order information associated with them. Both the PID and workshop discussions have made it clear that we are unable to match the repair ticket (numerator) with the its associated order (denominator).